RECENT CASES.

CARRIER—FARE—TICKETS—OPPORTUNITY TO PROCURE—EJECTION OF PASSENGERS.—PHILLIPS V. SOUTHERN R. R. Co., 40 S. E. Rep. 268 (Ga.).—The defendant's agent refused to sell the plaintiff a ticket, not knowing that the train would stop at the plaintiff's destination. It being customary under like circumstances to charge passengers without tickets no higher fare, the plaintiff refused to pay more, thereupon being ejected from the train. *Held*, the defendant liable.

A common carrier, if they charge passengers without tickets a higher rate, must first give them an opportunity to procure the same. *Railroad Co. v. Rogers*, 38 Ind. 116; *Railroad Co. v. Rinard*, 46 Ind. 293. A common carrier cannot discriminate; *Railroad Co. v. Park*, 83 Ky. 510.

CHINESE EXCLUSION—BURDEN OF PROOF—SUFFICIENCY OF EVIDENCE.—U. S. V. CHUN HOY, 111 FED. 899 (HAWAII).—Section 3 of the Geary Act places upon a Chinaman arrested for being illegally in this country the burden of proving affirmatively his right to remain. *Held*, an act of Congress raising presumption of guilt is valid, and evidence of Hawaiian birth, insufficient.

This presumption should be viewed under rule of evidence as to facts peculiarly within the knowledge of accused. Its harshness was due less to its intrinsic nature than to penalty of section 4. *Fong Que Ting v. U. S.*, 13 S. Ct. Rep. 1016; *In re Sing Lee*, 54 Fed. 334. Section 4 held unconstitutional. *U. S. v. Wong Dep Ken*, 57 Fed. 206. The mitigation of the penalty has removed objection to the rule.

Evidence of Hawaiian birth must be conclusive. Under 14 Amendment, law excluding immigrants is not applicable to Chinese person born in this country. *Gee Fook Sing v. U. S.*, 49 Fed. 146. *Lee Sing Far v. U. S.*, 94 Fed. 834.

CONSTITUTIONAL LAW—ELECTION BY LEGISLATURE OF ELECTION COMMISSIONERS—POWER TO CREATE BOARD TO TRY ELECTION CONTESTS.—PRATT V. BRECKINRIDGE, 65 S. W. REP. 136 (KY.).—The appellant having been awarded the office of attorney-general by a board of election commissioners, the appellee contested the decision, and the same commissioners, acting as a contest board, decided in his favor. He brought suit to gain possession of office. *Held*, that the legislature had no power to appoint a board of contest. Paynter, C. J., and Hobson and White, J. J., dissenting.

Although in *Stine v. Berry*, 96 Ky. 63, it was held that the statute creating special boards for the determination of contested elections was valid, this court favored the reasoning that a board of contest exercises in all its elements judicial power, and is therefore a court.

The whole judicial power of the State being expressly invested in the courts by the constitution, the exercise of it by the legislature transcends that power, and cannot be legally carried into effect. *James' Heirs v. Perry*, 10 Yerg. 59; 30 Am. Dec. 430.

CONSTITUTIONAL LAW—MINING COAL—PAYMENT BY WEIGHT—RIGHTS OF CORPORATIONS.—WOODSON V. STATE, 65 S. W. 465 (ARK.).—Under the ordinary constitutional provision that the powers granted a corporation may be altered or revoked,

a statute in so far as it requires a coal-mining corporation, where coal is mined and paid for by weight, to weigh the coal before screening, is not unconstitutional, as restricting the rights of corporations to contract.

The power to legislate, founded upon such a reservation in a charter, is not without limit, but is restricted by rights legitimately acquired by virtue of such charter. *Lothrop v. Steadman*, 42 Conn. 490; Fed. Cas. No. 8514; *Miller v. New York*, 15 Wall. 498; 21 L. Ed. 104; *Sheilds v. Ohio*, 95 U. S. 319, 324; 24 L. Ed. 357, 359; *Sinking Fund Cases*, 99 U. S. 721; 25 L. Ed. 502.

CONTRACTS—ILLEGAL CONDITION—FICTITIOUS SUIT—PUBLIC POLICY.—VAN HORN V. KITTITAS COUNTY, 112 FED. 1 (WASH.)—A county agreed to sell an issue of its bonds to a bidder on condition that he cause a feigned suit to be brought and prosecuted to the supreme court of the state, to determine the validity of the bonds prior to their issuance. Action against the county to recover damages for breach of this contract. *Held*, on demurrer, that the condition precedent is contrary to public policy, and the contract, being indivisible, void.

Not only is such an attempt to secure a judicial opinion upon a question of law by means of a mere colorable dispute, involving no real controversy, a fraud on the court, but a fair and exhaustive consideration of both sides of a question can rarely, if ever, be had when both parties are united in interest. *Lord v. Veazie*, 8 How. 251; *Smith v. Junction Railroad Co.*, 29 Ind. 546. The distinction between such a suit and an "amicable" suit is sharply defined, the friendliness in the latter consisting only in the manner of the proceedings, not in the absence of substantially conflicting interests. 9 Encycl. Pl. & Prac. pg. 720.

CORPORATIONS—INSOLVENCY—PREFERENCE—DIRECTORS.—SWIFT & CO. V. DYER-VEATCH CO., 62 N. E. 70 (IND.).—The Dyer-Veatch Co., a corporation, becoming insolvent, three of its directors who had become sureties on its notes payable to a bank, mortgaged all the property of the corporation to said bank. *Held*, that the transaction is void in the absence of proof authorizing it on the part of a majority of the directors other than those who were sureties, and that the creditors may question the transaction. Wiley and Henley., J. J., dissenting.

The opinion rendered here and in the recent case of *Nappannee Canning Co. v. Reid Murdock & Co.*, 60 N. E. 1068, rejects the principles which have governed the Supreme Courts of nearly all States and the U. S. Supreme Court. *Sanford F. & T. Co. v. Howe, Brown & Co.*, 157 U. S. 312. The weight of authority sustains an assignment by an insolvent corporation for the benefit of creditors even if directors, provided only the debts are bona fide: but *cf. Manufacturing Co. v. Hutchinson*, 63 Fed. 96. It was held in the *Canning Co.* case, that a majority of the directors must be disinterested. But this does not seem to be good law.

CREDITORS—PREFERRED INTEREST ON CLAIM—PEOPLE V. AMERICAN LOAN & TRUST CO., 73 N. Y. SUPP. 584.—After dissolution of defendant company, preferred creditors, who had previously been receiving interest at less than the legal rate, were paid the principal of their claims. They claimed interest at the legal rate from time of dissolution to settlement. *Held*, that they were entitled to the legal rate of interest even though unpreferred creditors were thereby deprived of the principal of their claims.

This case is unusual in that the preferred creditors had been receiving interest at less than the legal rate. It was decided (*In re Fay*, 6 Miss. Rep. 462) that where